UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,697	09/23/2003	Takashi Okaji	UNIU79.015AUS	2203

20995 7590 01/27/2009	EXAMINER
KNOBBE MARTENS OLSON & BEAR LLP	LOFTIS, JOHNNA RONEE
2040 MAIN STREET	
FOURTEENTH FLOOR	ART UNIT / PAPER NUMBER
IRVINE, CA 92614	3624

NOTIFICATION DATE	DELIVERY MODE
01/27/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
	10/668,697	OKAJI ET AL.
Office Action Summary	Examiner	Art Unit	
	JOHNNA R. LOFTIS	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>04 November 2008</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-3,5 and 6</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-3, 5, 6</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   The following is a final office action upon examination of application number 10668697.

Claims 1-3 and 5-6 are pending and have been examined on the merits discussed below.

Response to Arguments

2.   Applicant's arguments filed with respect to previous rejections under 35 USC 101 have

been fully considered but they are not persuasive. Applicant is referred to the memorandum

dated January 7, 2009 for guidance regarding statutory subject matter under 35 USC 101. The

test for a method claim is whether the claimed method is (1) tied to a particular machine or

apparatus, or (2) transforms a particular article to a different state or thing. This is called the

"machine-or-transformation test".

        There are two corollaries to the machine-or-transformation test. First, a mere field of use

limitation is generally insufficient to render an otherwise ineligible method claim patent-eligible.

This means the machine or transformation must impose meaningful limits on the method claim's

scope to pass the test. Second, insignificant extra-solution activity will not transform an

unpatentable principle into a patentable process. This means reciting a specific machine or a

particular transformation of a specific article in an insignificant step, such as data gathering or

outputting, is not sufficient to pass the test. Regarding claims 1-3, the claims do not specify

which step or steps are carried out by the particular machine or apparatus. The claims as

currently written are given the broadest reasonable interpretation. With that in mind, Examiner

asserts it is not clear if only the receiving step is carried out by a computer. If that is the case it

would be considered extra-solution activity. It is requested that Applicant amend claims to more clearly point out the particular machine and which steps it performs.

Regarding claim 5, it is not clear what is being claimed. Is the claim directed to a system? Currently, the claim is directed to software. While it is installed in a computer, there is no structural relationship to make the claim statutory under 35 USC 101. See rejections below.

3.   With respect to Applicant arguments directed to the previous rejection under 35 USC 103, Examiner respectfully disagrees. Applicant argues Aoki does not teach producing two different products. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., production of two different products) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Examiner points to column 3 as an example of Aoki disclosing a number of products being produced. It is clear that Aoki is directing to producing several products for an order. While the reference may teach producing the same product in multiples, the claims do not distinguish from the prior art since they do not specify the plurality of products are distinct.

4.   With respect to Applicant's argument that Aoki does not teach production scheduling being repeated periodically so delivery dates are complied with. Examiner points to columns 5 and 6 wherein Aoki teaches the periodic updating of feed dates based on capacity and availability. If a vacancy of the producing apparatuses is found, the load of the order is reallocated (changed) to begin at an earlier date; this process is repeated; as the delivery date is

moved up this keeps in compliance with scheduled delivery creating a pattern in which as new

vacancies arrive, the start dates can be moved up. Previous rejections are upheld.

Claim Rejections - 35 USC § 101

5.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or
> any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and
> requirements of this title.

6.   Claims 1-5 are rejected under 35 U.S.C. 101. Regarding claims 1-3, 7 and 8, based on

Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to

examiners is that a § 101 process must (1) be tied to another statutory class (such as a particular

apparatus) or (2) transform underlying subject matter (such as an article or materials) to a

different state or thing. Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S.

584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S.

780,787-88 (1876).

        An example of a method claim that would <u>not</u> qualify as a statutory process would be a

claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim

should positively recite the other statutory class (the thing or product) to which it is tied, for

example by identifying the apparatus that accomplishes the method steps, or positively recite the

subject matter that is being transformed, for example by identifying the material that is being

changed to a different state.

        Here, applicant's method steps fail the first prong of the new Federal Circuit decision

since they are not tied to another statutory class and can be performed without the use of a

particular apparatus. While information is stored in a database, there is only a nominal tie

between the method and apparatus. Specifically, the claim limitation directed to the analysis of

the data must positively recite the apparatus to which it is tied. Thus, claims 1-4 are non-

statutory since they may be performed within the human mind.

Further, claim 5 is also rejected as being directed toward non-statutory subject matter.

The claim is directed to software per se. Claim 5 recites "a production scheduling management

software program installed in a computer". As drafted, the claim fails to define any structural

and functional interrelationships between the software per se and other elements of the invention

that permit the software's function to be realized. (See MPEP § 2106 Section IV B 1 (a)).

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

8.   Claims 1-3, 5, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aoki, US

5,325,304, in view of Seth et al, US 7,065,499.

As per claim 1, Aoki teaches receiving information of customer orders and information of

and storing into a received order database (column 2, lines 43-48 – order information is stored in

an order data file); dividing orders stored in said received order database based on a reference

master having various kinds of information about production materials registered therein, and

storing the information of the orders which have been subjected to the division process to a

received order division database (data file; column 5, lines 8-31 – ordered products are analyzed

to determine how many products can be fulfilled by stock products and how many are necessary

to be produced; the orders are stored in a data file); applying a process development to the

orders which have been subjected to the division process, based on a basic unit master and

storing into a process development database (column 5, lines 32-41 – a feeding plan is

determined from standard production periods based on previous orders); specifying an optimum

production starting date based on the information of orders which have been subjected to the

process development and a production pattern stored in a production pattern database,

performing loading, and storing results of the loading into a production planning database

(column 5, lines 32-41 – an optimal start date is determined based on standard production

periods, i.e., if delivery is scheduled for 11/30 and standard production period is 20 days, the

latest feeding (start) date is 11/9); creating delivery date answer information based on said

optimum production starting date (column 5, lines 32-41 – an optimal start date is determined

based on standard production periods, i.e., if delivery is scheduled for 11/30 and standard

production period is 20 days, the latest feeding (start) date is 11/9); and wherein said production

pattern describes a sequence of production of a plurality of products, and it set in such a manner

that a production scheduling is repeated periodically and that the compliance rate of delivery date

of a target product becomes a maximum (column 5, lines 32-67 – the delivery date is kept at a

maximum, while the feeding day varies to accommodate the delivery date. For each different

product, a feeding day is calculated. See column 5, lines 50-61 which specifically indicates more

than one product is being produced and each product is scheduled in sequence (first process

producing two apparatuses is scheduled so that it takes place prior to second process producing

one apparatus).

Aoki does not explicitly teach prospect orders. Seth et al teaches gathering product queries and requests including customer committed orders as well as forecasted orders in an analogous art of for the benefit of processing the orders to arrive at a promised delivery date. It would have been obvious to one of ordinary skill in the art at the time of the invention to include both customer orders and forecasted (prospect) orders in the methodology of Aoki as a way to achieve the expected results of fully anticipating demand requests so as to ensure products are available when promised.

As per claim 2, Aoki teaches changing a production scheduling stored in said production planning database (column 5, lines 42-67 – if a vacancy of the producing apparatuses is found, the load of the order is reallocated (changed) to begin at an earlier date).

As per claim 3, Aoki teaches displaying a production scheduling stored in said production planning database and production results in a compared manner (column 6, lines 9-47 - comparing the scheduled production delivery date with the appointed delivery date from the customer and displaying the scheduled date delivery and number of missing days so that an operator can change the delivery date).

As per claim 5, Aoki teaches receiving information of customer orders and information of and storing into a received order database (column 2, lines 43-48 – order information is stored in an order data file); dividing orders stored in said received order database based on a reference master having various kinds of information about production materials registered therein, and storing the information of the orders which have been subjected to the division process to a received order division database (data file; column 5, lines 8-31 – ordered products are analyzed to determine how many products can be fulfilled by stock products and how many are necessary

to be produced; the orders are stored in a data file); applying a process development to the

orders which have been subjected to the division process, based on a basic unit master and

storing into a process development database (column 5, lines 32-41 – a feeding plan is

determined from standard production periods based on previous orders); specifying an optimum

production starting date based on the information of orders which have been subjected to the

process development and a production pattern stored in a production pattern database,

performing loading, and storing results of the loading into a production planning database

(column 5, lines 32-41 – an optimal start date is determined based on standard production

periods, i.e., if delivery is scheduled for 11/30 and standard production period is 20 days, the

latest feeding (start) date is 11/9); creating delivery date answer information based on said

optimum production starting date (column 5, lines 32-41 – an optimal start date is determined

based on standard production periods, i.e., if delivery is scheduled for 11/30 and standard

production period is 20 days, the latest feeding (start) date is 11/9); and wherein said production

pattern describes a sequence of production of a plurality of products, and it set in such a manner

that a production scheduling is repeated periodically and that the compliance rate of delivery date

of a target product becomes a maximum (column 5, lines 32-67 – the delivery date is kept at a

maximum, while the feeding day varies to accommodate the delivery date. For each different

product, a feeding day is calculated. See column 5, lines 50-61 which specifically indicates more

than one product is being produced and each product is scheduled in sequence (first process

producing two apparatuses is scheduled so that it takes place prior to second process producing

one apparatus).

Aoki does not explicitly teach prospect orders. Seth et al teaches gathering product queries and requests including customer committed orders as well as forecasted orders in an analogous art of production scheduling for the benefit of processing orders to arrive at a promised delivery date (column 5, lines 41-59 and abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to include both customer orders and forecasted (prospect) orders in the methodology of Aoki as a way to achieve the expected results of fully anticipating demand requests so as to ensure products are available when promised.

As per claim 6, Aoki teaches receiving information of customer orders and information of and storing into a received order database (column 2, lines 43-48 – order information is stored in an order data file); dividing orders stored in said received order database based on a reference master having various kinds of information about production materials registered therein, and storing the information of the orders which have been subjected to the division process to a received order division database (data file; column 5, lines 8-31 – ordered products are analyzed to determine how many products can be fulfilled by stock products and how many are necessary to be produced; the orders are stored in a data file); applying a process development to the orders which have been subjected to the division process, based on a basic unit master and storing into a process development database (column 5, lines 32-41 – a feeding plan is determined from standard production periods based on previous orders); specifying an optimum production starting date based on the information of orders which have been subjected to the process development and a production pattern stored in a production pattern database, performing loading, and storing results of the loading into a production planning database (column 5, lines 32-41 – an optimal start date is determined based on standard production

periods, i.e., if delivery is scheduled for 11/30 and standard production period is 20 days, the

latest feeding (start) date is 11/9); creating delivery date answer information based on said

optimum production starting date (column 5, lines 32-41 – an optimal start date is determined

based on standard production periods, i.e., if delivery is scheduled for 11/30 and standard

production period is 20 days, the latest feeding (start) date is 11/9); and wherein said production

pattern describes a sequence of production of a plurality of products, and it set in such a manner

that a production scheduling is repeated periodically and that the compliance rate of delivery date

of a target product becomes a maximum (column 5, lines 32-67 – the delivery date is kept at a

maximum, while the feeding day varies to accommodate the delivery date. For each different

product, a feeding day is calculated. See column 5, lines 50-61 which specifically indicates more

than one product is being produced and each product is scheduled in sequence (first process

producing two apparatuses is scheduled so that it takes place prior to second process producing

one apparatus).

      Aoki does not explicitly teach prospect orders. Seth et al teaches gathering product

queries and requests including customer committed orders as well as forecasted orders in an

analogous art of production scheduling for the benefit of processing orders to arrive at a

promised delivery date (column 5, lines 41-59 and abstract). It would have been obvious to one

of ordinary skill in the art at the time of the invention to include both customer orders and

forecasted (prospect) orders in the methodology of Aoki as a way to achieve the expected results

of fully anticipating demand requests so as to ensure products are available when promised.

Conclusion

9.   Applicant's amendment necessitated the new ground(s) of rejection presented in this

Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to JOHNNA R. LOFTIS whose telephone number is (571)272-

6736. The examiner can normally be reached on M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Brad Bayat can be reached on 571-272-6636. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

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like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/jl/
1/20/09

/Bradley B Bayat/
Supervisory Patent Examiner, Art Unit 3624